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November 16, 2005

The Honorable Stephen Johnson
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its twenty-fifth meeting on October 20 and 21, 2005, in San Diego, California. First, we want to thank you for the opportunity to meet with you at the CEC Council Session in Quebec City. It is always an honor to meet with you at the Council Sessions.

We would also like to express our sincere gratitude to all the government officials who took the time to attend the meeting and brief us on various aspects of the CEC's work, including Jerry Clifford, and Nadtya Ruiz from the EPA Office of International Affairs. We would also like to thank Rafael De Leon, Oscar Carrillo, Nancy Bradley, and Geraldine Brown from the EPA Office of Cooperative Environmental Management for organizing and staffing the meeting. We very much appreciated the participation of Doug Wright from the CEC Secretariat and Jane Gardner from the Joint Public Advisory Committee (JPAC). We would also like to thank Acting Director Barbara McLeod from the Office of International Environmental Policy, for her thoughtful response to our May 21st letter.

In addition, we want to thank John Knox, professor at Pennsylvania State Dickinson School of Law for his many years of vision, leadership, and dedication to the CEC. Mr. Knox steps down as NAC chair after serving in this capacity for six years and we thank him for his many outstanding contributions to the CEC over its first decade and for his academic contributions to the field. Also stepping down from the NAC are: Wilma Subra with the Louisiana Environmental Action Network, Robert Shinn Jr. with S2 Concepts, and César Luna with the Environmental Health Coalition. We thank them all for their many significant contributions. Stephen Mahfood also steps down as chair of the GAC, and we thank him too for his leadership and commitment.

We would like to thank Eric Terrill from Scripps Institution of Oceanography for his presentation on ocean applications in Southern California of the Integrated Ocean Observing System, a timely presentation as we continue discussions on implementing the information for the decision-making pillar outlined in the Puebla Declaration and on the development of an integrated strategy for information within the CEC. And finally, we thank Clay Philips, Jeff Crooks and Oscar Romo from the Tijuana National Estuarine Research Reserve for a very informative field trip to the Tijuana estuary that shed light on the many environmental challenges of the border region.

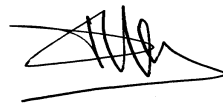
We spent most of our time and attention at the meeting discussing four interrelated topics and the corresponding supporting documents prepared for the NAC and GAC by EPA's Office of International Affairs. These topics are as follows: 1) private sector involvement; 2) the CEC budget; 3) the future role of the working groups; and, 4) publications reform. We understand the priority and urgency, expressed in particular by Jerry Clifford, in moving forward swiftly with the development of a strategy in the next few months on how to re-engage and invigorate the participation of the private sector in the activities of the CEC. It is clear that these issues and ideas will maintain their relevance to the U.S. government in the next year and we look forward to assisting EPA while continuing to reflect on how best to achieve this objective.

The NAC noted the effort made by the Office of International Affairs to develop documents in support of the issues of relevance and the priorities on which the US government seeks the advice of the NAC and GAC. These documents and others developed by the CEC do shed light on the questions we have been asked to debate and advise on, and we thank the staff for this effort.

We were very pleased to hear, albeit informally, that the Mexican government was re-considering its original decision to cut its funding contribution to the CEC, and hope that these funding uncertainties will disappear as the role and value of the CEC and its important accomplishments over its short history become better known to the citizens of North America.

We hope our advice is useful to EPA and other government officials as we continue to think about the long-term implementation of the Puebla Declaration, the CEC strategic plan, and the operational plans for 2005 and 2006. Our next committee meeting will be April 6-7, 2006 in Washington, D.C. Thank you for your continued support of the CEC and the opportunity to advise you on these matters.

Very truly yours,



M. Dolores Wesson
Chair, National Advisory Committee

cc: Judith Ayres, Assistant Administrator for International Affairs
Jerry Clifford, Deputy Assistant Administrator for International Affairs
Plácido Dos Santos, Chair, U.S. Governmental Advisory Committee
Jane Gardner, Chair, Joint Public Advisory Committee
Jean Perras, Chair, Canadian National Advisory Committee
John Knox, Past Chair, National Advisory Committee
Members of the U.S. National Advisory Committee:
Dennis Aigner Aldo Morell
Michael Andrews Carlos Perez
Karen Chapman Anne Perrault
Irasema Coronado Glen Prickett
Adam Greene Chris Wold
Richard Guimond

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2005-5 (November 16, 2005): Response to EPA on private sector involvement

The NAC spent considerable time discussing the issue of private sector involvement at this meeting, an issue that had also been the focus of its last meeting. A priority of the U.S. government, as stated at this meeting, is to conceptualize a strategy that will further the involvement of multinational companies in Mexico and build new partnerships with the private sector. The timing for this goal is for actions to be defined by the next Council Session in June 2006.

The NAC was pleased to see that the notes for the Business Roundtable on Environmental Capacity, convened by the NAC and GAC on April 27 in Washington DC, have been distributed and are now posted on the NAC-GAC website housed by the Office of Cooperative Environmental Management (OCEM). This meeting brought together a number of multinational companies, non-governmental organizations, and government agencies working on capacity-building in Mexico and highlighting partnerships and programs that can serve as models for replication in other industries or venues.

The NAC noted that, given the many potential areas for partnerships that are critical to Mexico (e.g., industrial waste, health, manufacturing...), greening the supply chain is a good way to think about private sector involvement for the time being. Many multinationals are currently engaged in developing and implementing these kinds of programs; the NAC noted that it is appropriate and cost-effective for the CEC to leverage and build on these ongoing activities.

Thus far it appears that involvement from the Mexican government in these private industry programs has been limited; this is one aspect that the CEC may be able to address more readily than private industry itself by using its contacts to raise awareness about these programs and by building capacity within governmental agencies and industry at the same time. It was pointed out that the CEC has several ongoing projects that share many similarities with this focus including its Greening Supply Chains Project, which should also be borne in mind as these initiatives are fleshed out and developed. Given the limited resources of the CEC, as well as the large potential for positive and widespread change, the NAC recommends again that collaborations with the private sector be focused on greening the supply chain because of the potential for impacting many industries along the way while catalyzing sound management and green practices in multiple sectors of the Mexican economy.

The NAC also noted that there are many opportunities to work to create links between the private sector and academic institutions in the three countries. These partnerships have not been fully tapped and should be considered in the formulation of any strategy with the private sector.

There was wide agreement on the following points discussed by the NAC. The theme of private sector involvement is not new to the CEC. Many activities are currently taking place around partnerships with the private sector; there should be a concerted effort to ensure that all these actions are coordinated and moving in the same direction. Any new activities or programs should build upon ongoing projects and past activities, such as the ideas presented at the meeting sponsored by the NAC-GAC on April 27, 2005, and the JPAC workshop held during its Twelfth Session in Montreal entitled "Needs and Opportunities for Capacity Building among Private and Non-Profit Sectors" on June 21, 2005. The CEC is currently engaged in several projects related to private sector involvement; efforts undertaken by the parties should be consistent with and complementary to ongoing CEC activities. Finally, the NAC expressed concern that EPA's Office of International Affairs might move ahead without Canada or Mexico in announcing private sector projects to promote capacity-building. All actions aimed at working with the private sector should strive to include not just the CEC Secretariat and JPAC, but also reach out and engage Canada and Mexico to ensure that the benefits of these partnerships with the private sector are leveraged across all three countries.

Action item: The NAC agreed to take the lead in convening a small ad hoc committee of its members and invite participation of the GAC; the charge of the committee will be to outline a strategy on how best to involve the private sector in capacity-building in Mexico. The goal of the ad hoc committee will be to draft a short white paper outlining a course of action to be implemented before the next Council session in June 2006. This ad hoc committee of the NAC and GAC will work between now and June to advise the U.S. government on designing a strategy for private sector involvement on greening the supply chain that is complementary to current CEC activities and reaches out to Canadian and Mexican multinational companies and governmental agencies as necessary. It is important that this white paper is taken into consideration prior to moving forward on the U.S. Proposal for Private Sector Participation in CEC Activities.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2005-6 (November 16, 2005): Response to EPA on budget reform

The NAC discussions on the budget were focused on: a) general budget levels, b) the potential budget cut resulting from Mexico's contribution being in question for the time being, and c) the notion that in real terms the budget of the CEC has diminished over the last decade due to the disadvantageous exchange rate of the Canadian dollar and the impacts of inflation. The effects of the shrinking budget on the activities of the CEC have often been discussed. The NAC noted the importance of encouraging the Mexican government in all ways possible to continue its commitment and contribution to the CEC as laid out in the NAAEC agreement. We will continue to think about how best to make the programs of the CEC relevant to the needs and priorities of Mexico.

Related to this last issue is the notion of better tracking and reporting of the accomplishments of the CEC over its history. Tracking success stories and lessons learned might add to the administrative burden of the Secretariat, but will undoubtedly make it easier to explain and justify the existence and value of the CEC, particularly in times of changing administrations in all three countries. (Some examples of successes cited in the discussion are the banning of DDT in Mexico, and the *Metales y Derivados* Submission under Articles 14 and 15 case in Tijuana, which is now being addressed with the participation of the local community.)

With regard to the specific question posed to the NAC on relevant financial reporting models that it may suggest for adoption by the CEC Secretariat, the NAC believes that this is an area where an open dialogue between the CEC staff and the Parties should ensure that financial information is provided in a mutually agreed-upon manner. Many models are available to choose from that will provide the level of detail desired. The UNEP budget proposed by the Office of International Affairs is one such model. However, the course of action should be dictated by a practical approach and a commitment to move towards a system of reporting that is acceptable to all parties, meets international standards, and is easily implemented with the resources available to the Secretariat and the staff charged with this work. A suggested approach is to build on the method now in existence, improving it until a level of detail in reporting is reached that is acceptable, useful and not unduly burdensome.

In general, the NAC believes that this issue is well on its way to being resolved in a successful manner and does not see the need to provide further advice at this time.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2005-7 (November 16, 2005): Response to EPA on the future role of working groups

During our discussions on the role of working groups, the NAC was unclear on which working groups were covered by the proposals by the U.S., Mexico and Canada. Article 9(5) of the NAAEC provides that the Council may “establish, and assign responsibilities to, *ad hoc* or standing committees, working groups or expert groups.” In addition, Article 13 of the NAAEC allows the Secretariat to “obtain assistance of one or more independent experts of recognized experience in the matter to assist in the preparation of the report.” Under Article 15, the Secretariat may consider information developed by independent experts when preparing a factual record. The NAC was left with the impression that the US proposal was using “working group” as a general term to cover all these situations. However, it is also possible that the U.S. proposal only relates to working groups established by the Council pursuant to Article 9(5). This point should be clarified in future discussions.

The NAC supports the continued independence of the Secretariat to obtain independent expert advice to support Article 13 reports and Article 14/15 factual records. The 10(6) working group established pursuant to the NAAEC should continue its current work and configuration. Hence, our recommendations below only relate to working groups established under Article 9(5).

On the issue of the continued existence of the working groups as they are presently configured, the NAC unanimously believes that the existence of the working groups under Article 9(5) should support the three pillars laid out in the Puebla Declaration and in the new Strategic Plan of the CEC. No doubt the current working groups have achieved many objectives and are in large part responsible for many important successes. However, moving in the directions established in the Puebla Declaration will require the creation of new and flexible working groups to address emerging program needs in concert with the new work program of the CEC. In summary, the NAC feels there is a clear need for working groups under Article 9(5). However, the structure and functioning of these working groups needs to be simplified and harmonized; their roles and reporting lines should be clear to all.

Recommendation: The NAC supports the dissolution of all working groups (except 10(6)) and the creation of new ones at the discretion of the Secretariat and the Council that will more adequately support the new three pillars: trade and environment, information for decision-making and capacity-building.

Working groups in all cases should have clearly defined charters, terms of reference as well as reporting lines and procedures that are clear to all. The NAC further recommends that the composition and tenure of the working group experts be publicly available on the CEC web site to facilitate communication within and among countries as well as with the Secretariat.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2005- 8 (November 16, 2005): Response to the EPA on publications reform

The NAC believes that the quality of CEC publications is an issue of fundamental importance to the reputation and credibility of the CEC. This point cannot be sufficiently emphasized, particularly in light of the fact that the development of information is a core function of the CEC. The NAC has provided detailed advice on this issue in its most recent letter and sees this as an issue that will require very detailed and careful attention by the Secretariat and the parties alike, both in the near future and until it is fully resolved. (See Advice 2005-3, May 20, 2005).

The NAC was pleased to see progress in the development of a framework for the quality management of all its publications, undertaken with the participation of all three parties. A draft prepared by the Scientific Integrity and Quality Assurance Experts Group, entitled "Framework for Quality Management Proposed for the CEC" and dated June 16, 2005, is now available. This draft includes detailed provisions for addressing all the different information products produced by the CEC: Council documents, reports of various kinds, program documents, JPAC documents and web publications. This draft framework includes guidelines for quality control in a graded approach recognizing that different products require different levels of scrutiny and review. Guidelines for scientific peer review, an issue the NAC is keenly interested in tracking, are also addressed. Unfortunately, this draft document was not submitted to the NAC in time for comment at its last meeting.

The NAC was asked to comment on a draft entitled "CEC Supplemental Publications Procedures." The NAC strongly supports the idea that work should continue on the formulation of a clear framework for quality assurance of all information products. A short, concise and clear set of guidelines should be developed and agreed upon by all parties and implemented as soon as possible. However, there was broad consensus on the NAC that it is hard to know what exactly would be accomplished with the language proposed in this draft document. The text is unclear and allows for different interpretations; after considerable discussion, we were unable to agree on what the intent is in several paragraphs.

There was serious concern expressed with the issue of whether this language deviates from the NAAEC, or would perhaps be redundant if adopted. For example, Paragraph 7 of the US proposal provides that the Secretariat cannot release press releases and newsletters without the "express approval from the Council," even if that press release relates solely to the functioning of the Secretariat. This presumption of nondisclosure is at odds with Article 1(h) of the NAAEC, which states that one objective of the NAAEC is to "promote transparency and publication participation in the development of environmental laws, regulations and policies." In summary, the NAC believes that this document, as written, will not bring clarity to this issue.

Recommendation: The NAC recommends development of a framework where all information products are identified at the planning stage from a list of categories akin to the ones described in the draft “CEC Supplemental Publications Procedures”. As the product develops over time, previously determined guidelines will dictate the level of review and scrutiny required for that category. Once these guidelines are clearly established, all questions related to the quality of information products can be more easily addressed throughout the development of the product, from start to finish. Once again, a well-defined process for scientific peer review should be clearly articulated within the guidelines.

Once these guidelines are developed, the NAC recommends that they should be prominently displayed and accessible on the CEC web site. They may also be of great value in building capacity throughout North America, inasmuch as they address issues of quality assurance and control for information products that are not unique to the CEC.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2005-9 (November 16, 2005): Status of the CEC Secretariat operational plan for 2005-2006, and budgets for 2005 and 2006

The NAC spent some time discussing the status of the operational plan for 2005 and 2006. We did not have time to discuss the content of the plan nor any of the proposed programs although this would have been important and useful task for the NAC to undertake. The NAC was very pleased to see that its advice on project life cycle has been of use and is being followed in large part. In particular, as part of this operational plan, some projects are now scheduled for termination, thus freeing up resources and staff to begin new projects. In keeping with its role as a catalyst, the NAC has previously urged the CEC to terminate projects that have run their course, along the lines of what has now come to be known as the 'conveyor belt' concept. (See Advice 2004-1, May 5, 2004.) In essence the argument put forth by the NAC proposed that the CEC should transition towards a portfolio of projects with a finite life span of several years, and not continue projects indefinitely as it had largely done in the past. Identifying in advance partners and users for the transfer of these projects and for long-term operations and maintenance is essential for the success of this 'conveyor belt' concept.

The NAC recognizes that the CEC is living through a period of transition as the Council, the Secretariat and the JPAC work to implement new policies and procedures that build on the TRAC report and on the Puebla Declaration. However, at the time of the NAC meeting, the 2005-2006 operational plan was still awaiting final approval by the Council. In addition, discussions on the 2005 budget were still ongoing, its final status still unresolved.

It was unclear why approval of the 2005 and now the 2006 budget have been delayed to such an extent. This delay has added serious challenges to the management of the CEC. Needless to say, this impacts the effective implementation of all its programs. The NAC strongly urges the U.S. government to make approval of the operational plan for 2005 and 2006, as well as the budgets for 2005 and 2006 a top priority. Both should be approved as a matter of urgency. In general, the operational plan and the budget for any given year should be approved well in advance of the corresponding fiscal year. This is a matter of fundamental importance for the smooth functioning and credibility of the CEC.

Recommendation: The operational plans for the CEC should be drafted and circulated by the Secretariat months before the start of the pertinent fiscal year. Approval by the Council should be finalized months before the start of that fiscal year. Similarly the Council should approve budgets well in advance of the fiscal year. A calendar for this process, if it does not already exist, should be developed as soon as possible and should be strictly adhered to by the Secretariat and the Council. The amount of time between the drafting, submittal and approval of these plans and budgets should be predetermined and set as part of this calendar.